

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBIN J LEWIS
Claimant

APPEAL NO. 07A-UI-09539-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFCO OUTSOURCE MANAGMENT
Employer

**OC: 09-09-07 R: 04
Claimant: Respondent (2)**

871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 3, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 24, 2007. The claimant did participate. The employer did participate through Teresa Jacobs, Human Resources Coordinator. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a baler and inspector full time beginning April 7, 2007 through August 22, 2007 when she was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on August 21 and 22, 2007 when she was a no call-no show for work. The claimant was last warned on July 30, 2007, that she faced termination from employment upon another incident of unexcused absenteeism. The claimant received a verbal warning about her attendance on July 23, 2007. Prior absences occurred on June 6, June 20, July 2, July 3, July 9, July 17 and July 18. Absences for funeral leave were not considered or counted against her.

Ms. Jacobs called the claimant on August 22 and told her that her employment was ending because she was a no call-no show on both August 21 and August 22. During that phone conversation the claimant did not tell Ms. Jacobs that her husband had called in for her on both days. Ms. Jacobs also spoke to Mr. Lewis and told him his employment was ending because he was a no call-no show on August 21 and 22. Mr. Lewis did not tell Ms. Jacobs that he had called in for both himself and Mrs. Lewis on August 21 and 22. He merely said he understood.

Claimant has received unemployment benefits since filing a claim with an effective date of September 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. The administrative law judge is persuaded that neither the claimant nor her husband called in to report the claimant's absence on August 21 or 22 or they would have indicated so during their phone conversation with Ms. Jacobs on August 22. The claimant knew she had an obligation to notify her employer of her absences and she did not do so. Benefits are withheld.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 3, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$770.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs